

General Terms and Conditions of Business

1. Basic precept

Nagel-Group Logistics SE, Nagel Transthermos GmbH & Co. KG as well as Nagel Albatros Spedition GmbH, Nagel Transport & Warehouse GmbH, Tiefkühllogistik-Center Wustermark GmbH, and TCG Glesien GmbH (from now on the 'Contractor') work based on the German General Forwarding Terms and Conditions 2017 (ADSp 2017), provided nothing to the contrary has been agreed, and these terms and conditions do not contradict mandatory laws. The Buyer's General Terms and Conditions of Business are expressly rejected. Cross-border traffic and international transport shall be subject to the applicable and mandatory common transport law in force, e.g., the Convention on the Contract for the International Carriage of Goods by Road (CMR). As supplementary measures, the following General Terms and Conditions of Business shall apply.

2. Scope of performance

The scope of performance includes, in particular, the carriage and handling of food and food-safe goods. The Buyer is to receive the respective transport time (transit time) from the branch responsible. These are regular transport times and not guaranteed delivery times under any circumstances. Regular traffic and weather conditions are assumed for the transit times quoted. In the event of force majeure, the Contractor shall be released from its obligation to render its performance for the duration of the force majeure. Force majeure covers, for example, strikes, lockouts, power cuts, official impediments such as safety measures of all types, or compliance with statutory/official regulations and other unforeseeable, unavoidable or serious events. For the sake of clarity, epidemics or pandemics (notably COVID-19 (SARS-CoV-2)) also constitute force majeure and thus an impediment to performance releasing the Parties from their performance obligation if the epidemic or pandemic situation was already foreseeable or had even already occurred when the contract was concluded, and the unforeseeable course and uncertain duration of such an epidemic or pandemic situation make the performance of the contract difficult or impossible.

A fixed or guaranteed delivery time shall only become an integral part of a contract if the Buyer requests a set delivery period or delivery time in writing before carriage begins and the Contractor has expressly confirmed acceptance of this instruction in writing before carriage begins. Generally, the agreement of such a delivery period shall incur additional costs, which shall be charged to the Buyer separately (see rates for ancillary costs).

The basis for the Contractor's capacity planning is the notified consignment scheduling and quantities involved or the assumptions made, and premises assumed. If there are any changes in the consignment scheduling and quantities involved, the Contractor shall endeavour to cover the entire performance within its overall capacity limits. In connection with this, the Buyer shall be obliged to forward the Contractor forecast data continuously while working together with the Contractor. These must enable the Contractor to plan the capacities required reliably, in particular concerning changes the Buyer made. This shall apply regardless of, and in addition to, information about recurring seasonal fluctuations. The Contractor's daily performance obligations are limited to a maximum additional quantity of 10% compared with the notified consignment scheduling and quantities concerning assumptions made and premises assumed.

The load height standard CCG II (following GS1/max 1,950 mm including pallet) shall apply as a maximum height for a consignment unit for carriage and handling.

The transport and associated handling services shall generally be rendered at an ambient temperature of between +2°C and +7°C (fresh). Ultra-fresh consignments the Buyer has to declare and label separately are handled and transported at a temperature range from +0°C to +4°C. If goods are declared and labelled accordingly, consignments consisting of frozen goods will be handled and transported at an ambient temperature of -18°C or colder. Differing specified temperatures (e.g., on goods/consignments, stated in shipping documents or data) do not impose a performance obligation on the Contractor concerning them unless the Contractor expressly confirmed compliance with the different temperature range separately before carriage begins. The Buyer shall be obliged to hand over the goods with a temperature buffer of at least 2°C to the upper limit of the temperature range to be observed by the Contractor and to provide proof thereof to the Contractor; goods that do not require refrigeration may only be handed over at a maximum temperature of +20°C. Goods must be handed over in such a way that the Contractor can conduct random tests. The test results are to be entered into a hand-over temperature log or shipping papers. The Contractor shall not take delivery of handled or transported hazardous goods as defined by ADR, nor will it accept so-called 'K3' material (not intended for human consumption).

Products that are not food-safe as well as products that can potentially harm other transported goods (e.g., aroma, temperature, pest infestation, transfer of human pathogenic micro-organisms) will not be accepted for transport and are prohibited cargo. The Buyer has to compensate for any resulting damage. The carriage and handling of food-safe non-foods shall be subject to the Contractor's separate consent.

The Buyer must inform the Contractor of particularly valuable goods or goods at risk of theft and goods worth more than EUR 50.00/kg separately in writing and in good time before carriage begins. Likewise, a value declaration must be declared if the impending damage threatens to exceed the legal liability by a factor of five. The Contractor shall be entitled to decide whether to accept an order or to reject it. Any costs which may have been incurred as a result of special measures taken to transport goods securely and to protect them from damage shall also be invoiced to the Buyer. This may, in particular, also include taking out insurance coverage for the goods in transit at the Buyer's expense. If the Buyer has failed to state the value of the goods, it shall bear the entire additional risk, because the Contractor was unable to take any (additional) security measures concerning the value.

3. Placing an order & taking over a consignment

Orders are to be placed electronically (via data transfer, web portal or e-mail) as agreed in each specific agreement between the Buyer and the Contractor. The Contractor assumes no liability for differences which stem from incomplete or missing information. The transport of general cargo of up to and including 7 Euro pallet slots must be placed at least one working day (Monday to Friday, excluding holidays) before shipping by noon. Notification of partial and complete loads must be given for consignments of 8 Euro pallet slots or more at least two working days (Monday to Friday) before shipping by noon. If the Buyer fails to give advance notice as required, the obligation to take delivery of the respective consignments shall in each case be extended by one working day (Monday to Friday, excluding holidays). The pick-up and delivery times for all notified consignments shall be specified in a separate agreement with the Contractor. They must be during the regular hours for the collection and delivery of goods (8.00 a.m. to 4.00 p.m.). Collection/delivery times outside these hours shall only be agreed upon if the Contractor has expressly confirmed them in the master agreement before carriage begins. The consignments must be ready for immediate collection and takeover during the hours stated. The following times have been calculated for loading vehicles. 1-5 pallets max. 30 minutes, 6-17 pallets max. 60 minutes, 18-33 pallets max. 90 minutes. A delay fee will be charged (see rates for ancillary costs) after the waiting period has expired, starting from the actual or contractually agreed arrival time at the respective loading address – whichever is later. Proof of arrival shall be evidenced by the driver's EU tachometer.

Non-compliance with the pre-determined set times for notifying and collecting/taking over a consignment shall exempt the Contractor from having to observe the transit times quoted. Should the above-named waiting time elapse, the Contractor shall be entitled to the rights stipulated in Section 417 of the German Commercial Code [HGB]. In particular, the Contractor shall be entitled to terminate the order and to receive compensation following Section 415(2) of the HGB, without the Contractor having to set a further period for collection/takeover.

The consignment data shall be sent electronically (following the GS1 Standard subject to amendments by the Contractor) by data transfer or the Contractor's web portal and shall include, inter alia, information about the type of goods, temperature data, type, quantity and SSCC/NVE of the dispatched units, weight as well as destination country plus precise consignee address with postal code plus the electronic delivery note. If there is more than one vehicle collecting the goods, the data transfer must relate to a specific vehicle.

The consignment weight to be declared is the weight of the consignment, including packaging and pallet used (= consignment gross weight). Missing, incorrect or incomplete information, as well as the resulting costs incurred, shall be for the Buyer's account. The Contractor reserves the right to measure and/or weigh the handed over consignment. Should the value determined by the Contractor deviate from the value provided by the Buyer, the Contractor reserves the right to invoice the value determined by the Contractor.

The goods shall be handed over and packed in a manner that they are tamper-proof, secure in transit and able to withstand handling and transport by truck so that the goods in these and other consignments are not at risk. Each dispatched unit is to be marked clearly with the name of the consignor and consignee as well as with SSCC/NVE labels on both front and rear. The Contractor reserves the right to invoice any missing or defective SSCC/NVE labels provided by the Buyer separately (see rates for ancillary costs). The Buyer must secure the goods to prevent them from leaking, and to prevent the diffusion of aromas. Consignments requiring handling within a temperature range from +0°C to +4°C are to be clearly marked with the instruction 'Ultra-fresh'.

The Buyer must draw up a corresponding loading list to verify the number of units to be handed over when they are loaded. If this verification cannot be conducted during loading, for example, due to preloaded swap bodies or a lack of access, the check shall be carried out with the next unloading. A dispatch unit is a pallet on which one or more retail packs are packaged and packed in such a way so that the individual retail packs and their contents are tamper-proof. The Buyer must also ensure that the goods do not project over the footprint of the pallet, the goods will withstand the demands of being sent in a consolidated cargo and that the pallet is accessible with a forklift. Otherwise, the Contractor will not assume any liability for damage to the goods. All the components of a consignment are to be handed over to the Contractor together.



4. Delivery

In principle, deliveries are to be made from Monday to Friday (except on bank holidays, 24/12 and 31/12) between 8.00 a.m. and 4.00 p.m. Other delivery times are to be agreed separately with the Contractor as required in the master agreement before carriage begins. The Contractor shall not be under any obligation to deliver and forward consignments on Saturdays, Sundays, and public holidays (national, regional and local). Exceptions shall have to be agreed with the management of the Contractor's respective branch separately in the master agreement before carriage begins. The Buyer shall be invoiced a separate fee for differing delivery times agreed (see rates for ancillary costs). If the time frame for deliveries to the consignee is during the night or early in the morning, the transit time shall automatically be extended by one working day. The Contractor can accept bookings within the time frame required or unloading agreements at the consignee for a separate fee (see rates for ancillary costs). One or several time frames for receiving goods must be available for at least 6 hours in total for bookings made within the time frame or unloading times reserved. The Buyer is to ensure that the consignee is ready to take delivery of a consignment during the delivery times and that he can receive the consignment immediately without delay. The following times have been calculated for carrying out deliveries: 1-5 pallets max. 30 minutes, 6-17 pallets max. 60 minutes, 18-33 pallets max. 90 minutes. A delay fee will be charged (see rates for ancillary costs) after the waiting period has expired, starting from the actual or contractually agreed arrival time at the respective unloading address – whichever is later. Proof of arrival shall be evidenced by the driver's EU tachometer. After the waiting period has expired, the Contractor shall not have to set the Buyer or consignee another separate deadline.

The Contractor shall deliver consignment sizes of 1-6 pallets with vehicles that have a total weight of 12 tonnes and a structural height of 390 cm. It must be ensured that the consignee can be reached directly by a delivery truck. As a general rule, deliveries of consignments consisting of 7 or more pallets are made using an articulated truck, which has a weight of at least 40 tonnes and does not have a hydraulic ramp. The consignee must provide a ramp for unloading the truck. Unloading must be carried out using suitable unloading equipment.

The Buyer is responsible for unloading and loading the truck in a manner which ensures safe carriage. Insofar as it is not the Buyer but the Contractor's employees or a third party who carry out the loading and unloading, in whole or in part, the latter will handle the loading and unloading as vicarious agents of the Buyer.

Forwarding the delivery notes for consignments without differences can be done for a separate fee (see rates for ancillary costs).

5. Loading equipment which has to be tracked

In return for loading equipment (for a list, see rates for ancillary costs), which has to be tracked and which the Contractor has taken over from the consignee within Germany, the Contractor must return the same quantities of exchangeable loading equipment to the Buyer, provided that the Buyer makes a separate and additional payment to the Contractor (see rates on ancillary rates). The Buyer must verify and ensure the exchangeability of the loading equipment used at the respective consignee. Should a consignee not provide the Contractor with any loading equipment when receiving a consignment, the Contractor's obligation to return loading equipment to the Buyer shall lapse. The exchangeability of the loading equipment used in foreign countries must be agreed upon individually.

The loading equipment shall be exchanged concurrently upon delivery. The Contractor shall manage a loading equipment account for the loading equipment taken over by the Buyer and exchanged by the consignee (current account as defined by Section 355 of the HGB). Based on the loading equipment notes, the Buyer shall be provided with a current statement of account every month. If the Buyer does not raise any objections to the account within ten days of receipt of the statement of account, the receivables/liabilities recorded therein shall be considered recognised by the Buyer.

The Contractor shall owe the Buyer the same number of usable Class C Euro pallets (following GS1 application recommendations) as the Euro pallets, which the Contractor has taken over from the consignee.

As the Contractor's sole contractual partner, the Buyer is responsible for the agreed exchange of the loading equipment being completed under the contract at the premises of the consignee/consignor. Without being requested to do so, the Buyer shall be obliged to notify the Contractor in writing before carriage begins, whether the consignee/consignor named by the Buyer in each case is working together with an external loading equipment service provider contracted by that consignee/consignor. If a consignee/consignor does work together with a loading equipment service provider, the Contractor shall consequently be exempted from its obligation to exchange the loading devices. Moreover, its obligation to return the loading devices shall be satisfied by handing over the IOUs issued by the loading device service provider to the Buyer. The Contractor can receive loading equipment certificates for a separate fee (see rates for ancillary costs). The obligation to return the loading devices shall lapse if the Contractor has exchanged the goods concurrently when taking them over.

The Buyer's obligation to pay the exchange fee for the loading equipment shall still apply in this case. If the Contractor is referred to a loading equipment service provider when delivering a consignment to a consignee or collecting it from a consignor, the Buyer shall consequently be obliged to bear all the additional costs the loading equipment service provider charged and the Contractor incurred and to settle them immediately. As a general rule, the Contractor reserves the right not to exchange loading equipment if a loading equipment services provider has been called in by a consignor/consignee. In this case, the Buyer shall not be entitled to receive compensation for damage.

6. Consignments passing through customs

The customs documents necessary for importing/exporting consignments transported into/out of a third country must be handed over to the Contractor. Moreover, the Buyer must send all the required information to the Contractor at least in writing and in good time.

The Contractor may only transport consignments subject to monitoring by the customs authorities upon prior separate written agreement. Such consignments shall be subject to compliance with customs and export regulations. These consignments include, inter alia, the T1/T2 forms, Carnet TIR, Carnet ATA, goods designated for inward processing, bonded warehouse goods.

The above-named consignments and goods subject to specific trade policy, customs or export regulations together with goods subject to market regulations, excise duties have to be notified to the Contractor in advance, and the Contractor may refuse to transport them. The transit time may be extended for goods that must pass through customs. The Buyer must refund all expenses the Contractor incurs plus an outlay commission of 3% (at least EUR 25.00) of the customs' duties or turnover tax on imports for each new month.

7. Payment arrangements

The fee shall be calculated following the Contractor's valid quote. The quote shall be prepared, taking into consideration the consignment schedule and quantities the Buyer forwarded before the acceptance of the initial order. If the above information was never sent, a quote should be drawn up based on assumptions and premises. If such assumptions do not materialise, the Contractor shall be entitled to adjust the terms of the quote retrospectively. The costs for deliveries to islands, through tunnels or on-board ferries, trade fairs or similar are not included in terms of a quote submitted.

Generally, amendments to quantities, consignment schedules and system requirements or performances may result in a change in the cost situation and the terms of a quote being revised. Cost increases beyond the control of the Contractor, e.g., the cost of diesel or toll fees, public duties, electricity tariffs, wage increases dictated by collective agreements, unforeseeable, unavoidable or serious events and the resulting consequences (e.g., epidemics, pandemics) shall also result in the Contractor being entitled to adjust its prices reasonably from the point in time at which the costs are increased, even during a period for which costs have been fixed. Diesel costs are subject to indexation, which can lead to an additional charge on freight rates when the market changes (see rates for ancillary costs).

The Contractor shall invoice the Buyer for the services it has rendered every week in arrears. Invoicing is carried out in electronic form provided the client agrees. Invoices have to be paid within 14 days of the invoice date. In the event payment is delayed, the Contractor reserves the right to charge interest on arrears within the framework of legal regulations. Offsetting counter-claims with the Contractor's claims are not permitted.

8. Liability

The Contractor works according to and can only be held liable based on the German General Forwarding Terms 2017 (ADSp 2017) unless stated otherwise by mandatory law (e.g., CMR). Notwithstanding number 23.1.1. In ADSp 2017, the liability for damage to goods (damages or losses) shall be limited for all transport within national borders up to a maximum of EUR 5.00/kg or 2 SZR/kg of the goods affected by damage, depending on whichever is the higher amount. The Contractor cannot be held liable for financial losses, including their consequential damages unless mandatory law stipulates otherwise. In particular, financial losses arising from contractual penalties or arranged lump sum compensation that the Buyer owes its contractual partners are not considered damage and are excluded from the Contractor's liability unless mandatory law stipulates otherwise. The Contractor shall not assume any liability for damage that was caused by incorrect data the Buyer provided or for incorrect quantities inside sealed dispatched units that are delivered undamaged unless mandatory law stipulates otherwise.

Minor damage of up to EUR 100.00 per individual loss shall not be charged to the Contractor.

9. Miscellaneous

There are no verbal side agreements. Amendments and supplements to this agreement must be made in writing. This shall also apply to an amendment of this clause on the written form itself.

The sole place of jurisdiction for all legal disputes shall be Bielefeld, Germany unless determined otherwise by compulsory law. Insofar as the CMR applies, the Parties shall agree on the above place of jurisdiction as an additional place of jurisdiction within the meaning of Section 31(1) of the CMR. The law of the Federal Republic of Germany shall apply exclusively. The obligations created by the contractual relationship with the Contractor shall, at all times, be subject to the observation of and compliance with the relevant national and international regulations or sovereign requirements in force at that time concerning safety and traceability of the trade or transport chain. The Buyer expressly confirms that he is aware of all the statutory obligations applicable to his business operations and that he will observe them in full and without limitation. This concerns all export law and customs law regulations, in particular with regard to embargoes applicable for individual persons, countries or goods. Given this, the Contractor may assume that the Buyer has already subjected all consignments handed over to this type of verification.

The version of these terms and conditions in force at the time at which a specific individual order is placed shall apply to both Parties. By placing an order with the Contractor, the Buyer thereby recognises the validity of these terms and conditions.